



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,263	10/16/2001	Takemi Aonuma	HIRA1180	1422

7590 08/07/2003

Gray Cary Ware Freidenrich
Suite 1600
4365 Executive Drive
San Diego, CA 92121-2189

EXAMINER

MARX, IRENE

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 08/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/889,263

Applicant(s)

AONUMA, TAKEMI

Examiner

Irene Marx

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

Art Unit: 1651

Election/Restrictions

DETAILED ACTION

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-4, drawn to a microorganism belonging to *Bacillus*.

Group II, claim(s) 5, drawn to a method for improving soil using *Bacillus*.

Group III, claim(s) 6 drawn to a composition for improving soil using *Bacillus*.

Group IV, claim(s) 7, drawn to a method for treating organic waste using *Bacillus*.

Group V, claim(s) 8, drawn to a composition for treating organic waste using *Bacillus*.

Group VI. Claim(s) 9, drawn to a method for fermenting soybeans using *Bacillus* and a soybean composition.

Group VII. Claim(s) 10, drawn to fermented soybeans composition.

Group VIII, claim(s) 11 and 15 drawn to a method of using *Bacillus* as food/feed additive.

Group IX, claim (s) ^{12 and} 16 drawn to a food/feed additive composition comprising *Bacillus*.

Group X, claim(s) 13, drawn to a method of using *Bacillus* to reduce bitterness

Group XI, -claim(s) 14, drawn to a bitterness reducing composition comprising *Bacillus*.

Group XII, claim 17, drawn to a method of inhibiting bacterial growth using *Bacillus*

Group XIII, claim 18, drawn to an antimicrobial composition comprising *Bacillus*.

The inventions listed as Groups I-XIII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

First, the inventions of groups I-XIII do not match a permitted category as PCT Rule 13.2 does not provide for multiple methods or products in one category. A variety of processes and compositions are claimed having distinct properties. For example, groups I-XIII are drawn to include different compositions and method that require different levels of purity and/or additional ingredients and/or requirements for their functional intended use. These groups

Art Unit: 1651

including feed/food compositions and methods, soil improving compositions and methods, antimicrobial compositions and methods, and compositions and methods for treating organic waste, bitterness reducing compositions and methods in addition to encompassing a variety of *Bacillus* having different properties.

No common inventive concept is shared among groups I through XIII, since a technical relationship is lacking among the claimed inventions involving one or more special technical features because *Bacillus* strains capable of reducing nitrate and containing chitin and/or chitosan in the cell walls are known in the art. See, e.g., WO 09/54022, page 16 col. 2, which demonstrates that at least *Bacillus subtilis* reduces nitrate. That this strain contains chitosan in its cell wall is adequately demonstrated by the statements in U.S. Patent No. 4,278,696 at col. 1, lines 36-44. The requirement of unity of invention is not fulfilled because there is no technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" means those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art. Therefore, a technical relationship is lacking among the claimed inventions involving one or more special technical features.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922. The examiner can normally be reached on Monday through Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone number for the organization where this application or proceeding is assigned is before final (703) 872-9306 and after final, (703) 872-9307.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service whose telephone number is (703) 308-0198 or the receptionist whose telephone number is (703) 308-1235.



Irene Marx
Primary Examiner
Art Unit 1651